EXHIBIT A

TO DECLARATION OF

SCOTT HENDERSON

Case# 0000 (03/00/07)
LIVING ESSENTIALS
5-Hour Energy

Advertising Agency:	
Challenger:	*Monitoring*
Product Type:	*Dietary Supplement*
Issues:	*Performance Claims*
Disposition:	*Modified/Discontinued*

- **Controlled, double-blinded, independent clinical study conducted on the product itself found to support performance claims.**

Basis of Inquiry: As a part of its ongoing monitoring program, and in conjunction with NAD's initiative with the Council for Responsible Nutrition ("CRN") designed to expand NAD review of advertising claims for dietary supplements, NAD inquired about certain print advertisements disseminated by Living Essentials for its 5-Hour Energy supplement. The advertising, print, Internet and television, included the following claims:

> *"When you were a kid, you felt like you had energy to spare. Now you can get that feeling back with 5-Hour Energy®."*
>
> *"Just one quick drink and you'll get hours of energy for work, play and everything in between."*
>
> *"It's a great way to stay focused and alert on the job, experience better workouts and reduce fatigue."*
>
> *"Hours of energy now. No crash later—and no jitters."*
>
> *"B-Vitamins for energy."*
>
> *"Amino acids for focus and better mood."*
>
> *"Enzymes to help you feel it fast."*
>
> *"Zero sugar, zero net carbs, zero herbal stimulants."*
>
> *"Drink it in seconds. Feel it in minutes. Last for hours."*

Advertiser's Position: Living Essentials maintained that all of its claims are supported by (1) publicly available scientific evidence concerning the effect of each of the product ingredients on body physiology and function, and (2) a double-blind, placebo controlled, randomized clinical trial on Living Essentials' 5-Hour Energy® product.

Living Essentials explained that 5-Hour Energy® is in a family of competing beverages, including, among others, Red Bull®, Monster®, and Rock Star® and that all make enhanced energy and concentration claims based on the scientific evidence associating two principal ingredients found in each product, caffeine and taurine, with those physiological effects. 5-Hour Energy®, Red Bull®, and Rock Star® also contain B-vitamins that support metabolic energy production and ATP regeneration. Only 5-Hour Energy®, stated the advertiser, contains all of the following ingredients: taurine; caffeine; D-glucuronolactone; malate; n-acetyl-l-tyrosine; l-phenylalanine; niacin; vitamin B6; vitamin B-12; folic acid; vitamin C; and a proprietary enzyme formulation.

The advertiser submitted a scientific report of Dr. Michael John Glade, explaining the mechanism of action for the energy enhancing effects of the taurine, caffeine, and D-glucuronolactone combination contained in 5-Hour Energy® and added that this science is well-known, and generally accepted in the scientific community. Living Essentials maintained that the quantitative amounts and forms of ingredients contained in 5-Hour Energy Drink for each ingredient mirror that in the scientific literature documenting the claimed physiological effects. Living Essentials quoted Dr. Glade's report explaining how the ingredients in 5-Hour Energy work to stimulate the body's lipolysis of stored triglycerides, to stimulate release of fatty acids from adipose tissue, to stimulate the β-oxidation of fatty acids released from adipose tissue storage depots, and to stimulate the conversion of stored triglycerides into energy (ATP):

> The[] concerted actions of taurine, caffeine and D-glucuronolactone increase ATP production, energy availability and daily energy expenditure. These actions are initiated rapidly following ingestion of taurine, caffeine and D-glucuronolactone; for example, both aerobic and anaerobic cycling endurance are increased within 30 minutes of their consumption. These nutrients act individually. The consumption of taurine increases whole-body, skeletal muscle and heart muscle power and endurance. The consumption of caffeine increases feelings of "energy."

Again quoting Dr. Glade's report, the advertiser asserted that in addition to those effects of taurine, caffeine, and D-glucuronolactone, the advertiser maintained that the scientific evidence supports the following conclusions concerning ingestion of the malate, tyrosine, Vitamin C, niacin, vitamin B6, vitamin B12, and folic acid in the product:

> The consumption of malate supports sustained ATP production during physical activity. The daily consumption of vitamin C, niacin, vitamin B6, vitamin B12, and folate supports the utilization of fatty acids for metabolic energy production and ATP regeneration.
>
> The consumption of *N*-acetyl-L-tyrosine enhances sympathetic nervous system activity and therefore enhances physical endurance while improving mood.

Thus, stated the advertiser, 5-Hour Energy® increases ATP production, energy availability and daily energy expenditure and by so doing, it gives the body "energy to spare," in the vernacular, and that added energy is akin to the feelings of sustained energy experienced in youth. These energy increases are measurable and sustainable from 30 minutes to several hours. Citing the clinical trial, the advertiser stated that the feelings of increased energy one would anticipate based on the peer-reviewed literature for the ingredients in fact occur in consumers across a wide range of age groups and health states and further, that the clinical trial confirms the existence of such feelings for hours, including as long as 4.9 hours, after ingestion of the product. Thus, stated Living Essentials, the claim "hours of energy now" is corroborated based on the rapid increase in energy and the long duration of effects documented in the 5-Hour Energy® clinical trial.

Living Essentials asserted that additional benefits come from concurrent consumption of taurine, caffeine, and D-glucuronolactone, including increased alertness, rapid reaction, improved focus, improved concentration, and improved short-term memory, as explained by Dr. Glade. The advertiser noted that of these physiological reactions, Living Essentials has limited its claims to focus and alertness, both of which, according to Dr. Glade, are well-substantiated effects that are not controversial in the scientific literature.

Again, citing Dr. Glade's report, the advertiser explained that concurrent ingestion of taurine, caffeine and D-glucuronolactone increases energy and increases aerobic and anaerobic cycling endurance within 30 minutes of ingesting the product. Moreover, stated Living Essentials, taurine ingestion increases whole-body, skeletal muscle and heart muscle power and endurance. As previously explained, Dr. Glade finds additional well-supported evidence for the role of the B-vitamins and Vitamin C, supporting metabolic energy production and ATP regeneration. Additionally, the advertiser stated that the generally accepted scientific evidence reveals that the *N*-acetyl-L-tyrosine in the product also enhances physical endurance. Accordingly, concluded the advertiser, the combined physiological effects of these substances on the body yields "better workouts" (i.e., ones replete with more energy, increased aerobic and anaerobic cycling endurance within 30 minutes of product ingestion, and whole-body, skeletal muscle, and heart muscle power and endurance). The increases in energy, aerobic and anaerobic cycling, and endurance are forces that necessarily diminish fatigue normally associated with exercise and therefore, Living Essentials maintained that the claim, "experience better workouts and reduce fatigue" is well corroborated.

Living Essentials explained that the quantitative amount of caffeine ingested per serving of the 5-Hour Energy®, is comparable to that of a cup of the leading premium coffee, an amount not typically associated with "the jitters." The advertiser offered that caffeine intoxication begins to occur in certain healthy individuals when approximately 600 mg or more of caffeine is ingested in one sitting and is characterized by, among other symptoms, the jitters.[1] By keeping its daily serving of the product well below the 600 mg level, Living Essentials ensures that its product is below a point at which those neuromuscular manifestations occur and, so, can claim "no jitters."

---

[1] See the Institute of Medicine Food and Nutrition Board Committee on Military Nutrition Research, *Caffeine for the Sustainment of Mental Task Performance Foundations for Military Operations* (2001) (concluding that single doses of caffeine containing up to 600 mg of caffeine are safe and do not produce neuromuscular manifestations ("jitters"))

Living Essentials stated that competing products that contain sugars can produce fluctuations in blood sugar levels that, when compensated for by the body's insulin, yield a "crash" effect, but because 5-Hour Energy® contains no sugars, it may claim the absence of a "crash" effect.

The proposition that niacin, vitamin B6, vitamin B12, and folic acid, at the dose levels delivered in one serving of 5-Hour Energy® provide for "energy" production in the body is well-accepted and not controversial in the scientific community, as Dr. Glade explains.

> "The daily consumption of niacin, vitamin B6, vitamin B12, and folate supports the utilization of fatty acids for metabolic energy production and ATP regeneration." Thus, the claim of "B-Vitamins for energy" is scientifically valid, substantiated, and well-accepted.

The proposition that the amino acids *N*-acetyl-L-tyrosine and L-phenylalanine, at the dose levels delivered in one serving of 5-Hour Energy® provide "for focus and better mood" is well-accepted and not controversial in the scientific community, as Dr. Glade explains:

> "enhanced sympathetic nervous system activity secondary to the consumption of *N*-acetyl-L-tyrosine and L-phenylalanine enhances cognitive functions and improves mood."

The claims concerning rapid physiological effects, "feel it fast" and "feel it in minutes" as well as the claims for sustained physiological effects, "lasts for hours," are well-corroborated. Dr. Glade explains:

> "The concurrent consumption of taurine, caffeine, and D-glucuronolactone increases aerobic and anaerobic cycling endurance, alertness, the ability to react quickly, the ability to focus, concentration, and short-term memory within 30 minutes of consumption."

In further support of its performance and "no crash" claims, the advertiser submitted a randomized, 3-arm comparative, controlled, double-blinded, independent study comparing 5-Hour Energy with competing energy drinks, Red Bull and Monster. The study was conducted by Dr. James Blum, Assistant Professor of Medicine, University of New England Medical School, Department of Epidemiology and Biostatistics Adjunct Faculty, University of Maine. The advertiser described the screening process, based upon Institutional-Review Board approved entrance criteria and underwent a placebo testing prior to testing each of the different energy beverages. The testing schedule was randomized meaning that each subject took the different beverages in random sequences. All testing was done on a day-long basis requiring each subject to appear in the morning and afternoon.

The baseline lab data of the participants included a complete metabolic profile, blood pressures, and pulse, all fell within normal range. The doctors conducting the testing concluded that the test population had few outliers with respect to their baseline data and most, if not all, of their behavioral tendencies fell within normal ranges.

The advertiser argued that the results of this study support its performance claims, as well as its claims regarding no "crash." The study, stated the advertiser, concluded that for the primary endpoints, 5-Hour Energy outperformed the other two beverages, Monster and Red Bull.

Further, stated the advertiser, the 5-Hour Energy® clinical trial corroborates that the feelings of increased energy occur rapidly and last for hours. That response is unremarkable from a scientific perspective, because, as Dr. Glade explains, it is derived from the well-known and non-controversial effects of concurrent ingestion of taurine, caffeine, and D-glucuronolactone along with daily consumption of vitamin C, niacin, vitamin B6, vitamin B12, and folic acid.

Living Essentials stated that the claim that the product has "zero sugar, zero net carbs, zero herbal stimulants" is factual. There are no sugars in the product and no herbs and a single serving of the product yields no more than 6 calories, comparable to the caloric intake from ingesting an 8 inch stalk of celery. No objectively measurable or cognizable quantity of those calories is attributable to carbohydrates.

The advertiser engaged a team of scientists from Neraç, Inc., formerly the New England Research Application Center, a scientific research organization originally formed as a collaboration between the University of Connecticut and the National Aeronautics & Space Administration, privatized in 1985, to evaluate, independently, the scientific evidence concerning the effects of the nutrients in 5-Hour Energy®. The advertiser submitted the Nerac report in support. The advertiser maintained that this is a peer-reviewed assessment that supports the independently derived conclusions of Dr. Glade concerning all substantive effects reviewed. The advertiser asserted that this report confirms and corroborates the findings of Dr. Glade which, in turn, are consistent with the results of the clinical trial on the 5-Hour Energy®. Thus, concluded the advertiser, three independent sources corroborate each other and provide substantial proof that the claims in issue are well-substantiated and generally accepted in the scientific community.

Addressing NAD's concerns that the advertising implies that while other energy drinks have too much caffeine, 5-Hour Energy has little or none, the advertiser argued that the comparison does not depend on the caffeine in the drinks but upon the combination of sugar and caffeine. The advertiser stressed that the crash effect occurs because of changes in blood sugar levels and since 5-Hour Energy contains no sugar, it will not produce the swings in blood sugar levels. The advertiser stated that Red Bull contains between 27 and 39 grams of sugar and Monster contains between 23 and 27 grams of sugar.

Regarding the non-disclosure of the fact that there is caffeine in 5-Hour Energy in some of the advertising, the advertiser stated that caffeine is listed on the nutrition facts panel for the product and the label alerts the consumer to the presence of caffeine with an express warning stating, "CAUTION: Contains about as much caffeine as a cup of coffee. Limit caffeine products to avoid nervousness, sleeplessness, and occasional rapid heartbeat." The advertiser added that energy drink consumers are in the market for a caffeinated beverage.

As to the claims that 5-Hour Energy will not cause "jitters," Living Essentials maintained that the amount of caffeine in 5-Hour Energy is below the amount that would cause tense and jittery reactions.

In summary, the advertiser maintained that its claims made for 5-Hour Energy® are substantiated by competent and reliable scientific evidence and by the opinion of independent scientist experts in the field.

Decision: 5-Hour Energy® is an energy drink designed to provide energy and enhance concentration. Energy drinks like 5-Hour Energy® include key ingredients, caffeine and taurine, and while not included in 5-Hour Energy, competing energy drinks contain sugar. 5-Hour Energy®, as well as competing energy drinks Red Bull®, and Rock Star® also contain B-vitamins that support metabolic energy production and ATP regeneration.

The advertising in question included a series of print advertisements, web advertising and television spots. Several of the advertisements included the headline:

"Hours of Energy, No Crash Later"

The theme/message of many of the print advertisements is that "energy drinks typically contain large amounts of sugar and caffeine," which can "make you feel jittery then let you down with a crash." The advertisements then distinguish 5-Hour Energy, "5-Hour Energy has a better approach – hours of energy with no jitters or crash."

Some of the advertisements then state that 5-Hour Energy contains "zero sugar and only as much caffeine as a cup of coffee so you won't experience the spike and crash that comes with typical energy drinks." Different versions of the advertisements make the same "energy now, no crash later" claims but make no mention that 5-Hour Energy contains any caffeine.

The advertising also included the following "energy" claims:

> *"When you were a kid, you felt like you had energy to spare. Now you can get that feeling back with 5-Hour Energy®."*
>
> *"Just one quick drink and you'll get hours of energy for work, play and everything in between."*

> *"It's a great way to stay focused and alert on the job, experience better workouts and reduce fatigue."*
>
> *"B-Vitamins for energy."*
>
> *"Amino acids for focus and better mood."*
>
> *"Enzymes to help you feel it fast."*
>
> *"Zero sugar, zero net carbs, zero herbal stimulants."*
>
> *"Drink it in seconds. Feel it in minutes. Last for hours."*

In support of its performance and "no crash" claims, the advertiser submitted a randomized, 3-arm comparative, controlled, double-blinded, independent study comparing 5-Hour Energy with competing energy drinks, Red Bull and Monster. NAD noted that the study used an approved, standardized screening process. Baseline lab data of the participants was taken and included a complete metabolic profile, blood pressures, and pulse, all of which fell within normal range.

The study concluded that 5-Hour Energy had the longest period of increased activity of 4.92 hours, at a 95% confidence level. In comparison, Red Bull had a period of increased activity of 4.39 hours, while Monster had a period of increased activity of 4.34 hours. The results also indicated that more individuals taking 5-Hour Energy reported longer intervals of energy, as compared to the other products. Specifically, close to 60% of the subjects experienced 5 or more hours of energy from 5-Hour Energy versus 30% for Monster and 20% for Red Bull. In addition, the results indicated that 94% of test subjects had 4.5 or more hours of energy from 5-Hour versus 52% for Monster and 67% for Red Bull. Lastly, when asked which beverage had the highest and longest effect, nearly 70% of the participants selected 5-Hour Energy.

The study also assessed the "crash" effect experienced by the participants. The range of crash was measured from the peak (highest energy) until the point in time when the individuals felt that they had reached the low point of the day (the "crash"). The mean crash time range for 5-Hour Energy was 2.43 hours, as compared to 1.36 hours for Red Bull and 1.43 hours for Monster. The results found that nearly 80% (32/41) of those taking Red Bull and 75% (29/40) of those taking Monster reported a moderately severe crash that left them extremely tired and in need of rest, another drink or some other action, while only 24% (10/42) of those taking 5-Hour Energy had similar reactions. The doctors concluded that 5-Hour Energy had a gentler let down and participants did not go below their baseline, whereas the other drinks exhibited a crash that brought the energy of the subjects below their morning energy level.

The study also concluded that the actual peak levels achieved by each drink were comparable and no statistical differences were found. In addition, there were several categories that did not show any differences between the drinks including cognitive testing, metabolic rates, and exercise parameters. Finally the study concluded that for the primary endpoints, 5-Hour Energy outperformed the other two beverages, Monster and Red Bull.

In addition to the clinical test, the advertiser submitted a plethora of studies on the additional ingredients in 5-Hour Energy and their relation to providing energy.

There is extensive research on the amino acid Taurine. Taurine is the most abundant free amino acid in heart and skeletal muscle. There are many studies on animals (rats) in which Taurine has been shown to improves exercise performance, protect the heart from ischemic damage, prevent hypertension in rats fed a high fructose diet & rats treated with alcohol. In addition, Taurine has been shown to be a potent neuroprotectant, protecting against glutamate excitotoxicity, cerebral ischemia, oxidative stress, and the buildup of toxins. Accordingly, there is some evidence that Taurine may help provide energy and replenish depleted Taurine when orally ingested as part of an energy drink.

Performance Claims

The advertising included the following "energy" performance claims:

> *"When you were a kid, you felt like you had energy to spare. Now you can get that feeling back with 5-Hour Energy®."*
>
> *"Just one quick drink and you'll get hours of energy for work, play and everything in between."*
>
> *"It's a great way to stay focused and alert on the job, experience better workouts and reduce fatigue."*
>
> *"Drink it in seconds. Feel it in minutes. Last for hours."*

NAD found that the advertiser's clinical testing provided ample support for these performance claims. The study found that 5-Hour energy provided an average of nearly 5 hours of energy. Accordingly, claims that 5-Hour Energy "lasts for hours" and provides "hours of energy" are supported. The clinical study, as well as the existing evidence on caffeine, also supports claims that you will "feel it in minutes."

Implication that 5-Hour Energy contains little or no Caffeine

However, NAD was concerned that the comparisons to other "energy drinks" in the advertising may convey unsupported messages. Specifically, the 5-Hour Energy advertising states, "Why do energy drinks make you crash?" and then goes on to answer the question, "because energy drinks have large amounts of sugar and caffeine." Some of the advertising further claims that 5-Hour Energy has "no sugar" and about 1 coffee cup equivalent of caffeine, while other advertising makes no mention of the caffeine included in 5-Hour Energy.

NAD was particularly concerned about the advertisements that discuss the benefits of 5-Hour Energy and make no mention of the fact that 5-Hour Energy contains caffeine. These same advertisements make claims such as "sail through your day without feeling tense, jittery, or crashing," further implying, in NAD's view, that the product will yield different results than those competing products containing caffeine.

NAD found that one reasonable takeaway from all of this advertising, is that other energy drinks have too much sugar AND caffeine and 5-Hour Energy has little, or even no sugar and caffeine. Clearly this is not true. While 5-Hour Energy has no sugar, it does, in fact, contain a significant amount of caffeine, when compared to Starbucks, is approximately one cup of coffee. In contrast, NAD noted that one of the competitive products, Red Bull, has approximately 80 mg of caffeine, substantially less than the amount contained in 5-Hour Energy.

In addition, some of the advertising also included the claim, *"Zero sugar, zero net carbs, zero herbal stimulants."* NAD found that consumers could reasonably interpret this claim to mean that this claim further implies that there is no caffeine in the product. While caffeine is not an herbal stimulant per se, some caffeine sources, such as guarana and the caffeine found in tea are herbal. Therefore, NAD found that advertising that discusses that other products have "too much sugar and caffeine" while failing to mention that 5-Hour Energy has caffeine, and further states that 5-Hour Energy has "zero herbal stimulants," conveys the inaccurate message that there is no caffeine in 5-Hour Energy.

Since caffeine is a powerful, commonly used stimulant, NAD found that it is important to disclose the presence of caffeine in a product such as this, particularly one claiming to provide "hours of energy."

NAD, therefore, recommended that the advertiser modify its advertising to avoid conveying the inaccurate message that 5-Hour Energy contains little or no caffeine. As to the advertisements that make no mention of the fact that 5-Hour Energy contains caffeine, NAD suggested that any advertising, making comparisons to other competing energy drinks that contain caffeine, disclose the fact that 5-Hour Energy contains caffeine.

Disclosure of Amount of Caffeine contained in 5-Hour Energy

The advertiser represented that 5-Hour Energy contains about as much caffeine as a cup of premium coffee. The advertising states that 5-Hour Energy contains the caffeine equivalent of "one cup of coffee," while the label states "about one cup," neither actually disclosing the exact amount contained in the product.

The FDA deems one cup of coffee to contain approximately 100 mg of caffeine, and therefore, under FDA definition, 5-Hour Energy would contain more than the amount of caffeine in "one cup of coffee." The advertiser argued that the FDA definition is outdated and not relevant here, since nearly any "cup of coffee," such as one from popular coffee specialty shops like Starbucks or Dunkin' Donuts, contains approximately twice the amount of caffeine. The advertiser maintained that in stating that 5-Hour Energy has "about one cup," it is comparing it to the commonly available cups of coffee, like Starbucks.

NAD concluded that, as long as the advertising is clear, and discloses that 5-Hour Energy does, in fact, contain caffeine, the advertiser can make the "one-cup of coffee" comparison. NAD reasoned that despite the FDA definition of one cup of coffee equaling approximately 100mg of caffeine, consumers are just as likely to understand one cup of coffee to be the amount of caffeine found in the currently popular coffees on the market, such as Starbucks and Dunkin' Donuts. Therefore, as long as the advertising clearly discloses that 5-Hour Energy contains caffeine, the advertiser can claim that its product contains "the amount of caffeine equivalent to one cup of coffee."

Claims that there is no Jitter Effect with 5-Hour Energy

The advertiser maintained that the level of caffeine in 5-Hour Energy is below that which would cause tense and jittery reactions. The advertiser stated that caffeine intoxication begins to occur in certain healthy individuals when approximately 600 mg or more of caffeine is ingested in one sitting and is characterized by, among other symptoms, the jitters. Living Essentials cited the Institute of Medicine Food and Nutrition Board Committee on Military Nutrition Research, *Caffeine for the Sustainment of Mental Task Performance Foundations for Military Operations* (2001), which concluded that single doses of caffeine containing up to 600 mg of caffeine are safe and do not produce neuromuscular manifestations ("jitters").

By keeping its daily serving of the product at well below the 600 mg level, Living Essentials maintained that its product is well below the point at which those neuromuscular manifestations occur and, so, can claim "no jitters."

The advertiser's clinical study did not assess "jitters," i.e., whether participants felt jittery from 5-Hour Energy. The advertiser is basing its no jitters claim simply on the fact that there is significantly less than 600 mg of caffeine in 5-Hour Energy.

NAD was concerned that because 5-Hour Energy contains a significant amount of caffeine, and since consumers associate "jitters" with caffeine, consumers might interpret the claims that there is no jitter effect to mean that there is no caffeine. NAD noted, however, that the amount of caffeine in 5-Hour Energy, while significant, is within reasonable amounts, and comparable to the amount contained in a strong cup of coffee. NAD reasoned that as long as the presence of caffeine contained in 5-Hour Energy is disclosed in the advertising, consumers are on notice that the product contains caffeine, and the claim that there are no jitters is adequately explained. Accordingly, NAD recommended that in advertising making a "no jitters" claim, the advertiser clearly disclose the presence of caffeine in 5-Hour Energy, thereby providing a context for the claim that there are no "jitters."

Claims that there is No Crashing with 5-Hour Energy

The advertiser explained that it is the combination of sugar and caffeine in the competing energy drink products that causes the "crash" effect, and since 5-Hour Energy does not contain *any* sugar, it does not cause a "crash" effect. Living Essentials stated that the crash effect occurs because of changes in blood sugar levels. Competing energy drinks such as Red Bull and Monster, stated the advertiser, contain between 27 and 39 grams of sugar and 23 and 27 grams of sugar, respectively.

In support of its claims that 5-Hour Energy produces less, or no crash as compared to other competitive energy drinks, the advertiser pointed to the clinical study, which assessed the crash effect experienced from 5-Hour Energy as compared to Monster and Red Bull.

In the study, the range of crash was measured from the peak (highest energy) until the point in time when the individuals felt that they had reached the low point of the day (the "crash"). The mean crash time range for 5-Hour Energy was 2.43 hours, as compared to 1.36 hours for Red Bull and 1.43 hours for Monster. The results found that nearly 80% (32/41) of those taking Red Bull and 75% (29/40) of those taking Monster reported a moderately severe crash that left them extremely tired and in need of rest, another drink or some other action, while only 24% (10/42) of those taking 5-Hour Energy had similar reactions.

NAD found that this study is sufficient to support a clearly qualified claim that 5-Hour Energy results in less of a crash effect than Red Bull and Monster. NAD, however, noted that this study did not support the advertiser's unqualified claims that 5-Hour Energy results in "no" crash effect. Accordingly, NAD recommended that the advertiser discontinue those claims.

Conclusion:

Overall, NAD found that the advertiser's clinical testing, together with its supplemental evidence, provided a reasonable basis for its energy performance claims for 5-Hour

Energy. Similarly, this study provided support for the advertiser's claim that consumers will experience less of a crash effect with 5-Hour Energy than with competing energy drinks Monster and Red Bull.

NAD, however, found that some of advertising reasonably implies that 5-Hour Energy does not contain caffeine, and NAD recommended that the advertiser modify these advertisements to clearly disclose the presence of caffeine in 5-Hour Energy. NAD found that as long as the presence of caffeine contained in 5-Hour Energy is disclosed, the advertiser's claim that "there is no jitter effect" is not likely to confuse consumers.

Advertiser's Statement: Living Essentials supports NAD's advertising review process and has reviewed in detail NAD's decision on its product 5-Hour Energy®. NAD finds Living Essentials' energy performance claims substantiated. NAD seeks, however, to ensure that Living Essentials' advertising consistently discloses the presence of caffeine in 5-Hour Energy® and that Living Essentials' claim of no crash effect is qualified. Living Essentials intends to modify its advertising to accommodate NAD's concerns.